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ENDORSED  
FILED

SEP - 8 2011

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF DEL NORTE

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF DEL NORTE

12 In re

13 **DIETRICH PENNINGTON,**

14 Petitioner,

15  
16 **On Habeas Corpus.**

Case No. HCPB11-5110

**RETURN TO THE ORDER TO SHOW  
CAUSE; SUPPORTING  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Judge: The Honorable William H. Follett

18  
19 Petitioner Dietrich Pennington is an inmate in the custody of the California Department of  
20 Corrections and Rehabilitation (CDCR), at Pelican Bay State Prison. On June 9, 2011,  
21 Pennington filed a petition for a writ of habeas corpus challenging prison officials' decision to  
22 validate him as an associate of the Black Guerilla Family (BGF) prison gang, and place him in the  
23 Security Housing Unit.

24 The Court should deny the petition because Pennington's claim is not subject to habeas  
25 relief. The substantive and procedural aspects of Pennington's gang status review were  
26 constitutionally permissible and thus, he was not denied due process. Indeed, the Court should  
27 deny Pennington's petition because the source items used to validate Pennington conformed to  
28

1 the criteria for validating a gang associate, and provided prison officials with some evidence to  
2 support their determination to validate Pennington as a BGF associate.

### 3 RETURN

4 In compliance with the Court's order directing respondent to file a return, respondent  
5 Acting Warden Greg Lewis, admits, denies, and alleges as follows:

6 1. Pennington is in the lawful custody of the CDCR, serving a term of life plus four  
7 years following his 1992 conviction for attempted murder, robbery, kidnapping, and  
8 enhancements for use of a weapon. (Ex. 1, Abstract of J., J. filed Apr. 27, 1992.)

9 2. Pennington does not challenge his conviction; instead he challenges his validation as  
10 an associate of the BGF prison gang. (Petr. at p. 1.)

11 3. Respondent alleges that prison gangs are considered the most disruptive of all prison  
12 groups. (*Madrid v. Gomez* (N.D. Cal. 1997) 889 F.Supp. 1146, 1155.) Prison gang activities  
13 include extortion, drug-trafficking, and premeditated assaults ranging from unarmed attacks to  
14 fatal stabbings. (*Id.* at 1241.) Because prison gang members must pledge allegiance to the gang  
15 for life, a thorough debriefing process is necessary to prove that renunciations of gang  
16 membership are genuine. (*Id.*; Cal. Code Regs., tit. 15, §§ 3378.1, 3378.2, 3341.5, subd. (c)(4),  
17 3378, subd. (c)(5).)

18 4. Respondent alleges that a gang "member" is an inmate who has been accepted into  
19 membership by the gang, while an "associate" is an inmate who is involved periodically or  
20 regularly with members or other associates of the gang. (Cal. Code Regs., tit. 15, §3378, subd.  
21 (c)(3), (4).) Section 3378 concerns critical case information and includes the procedures for  
22 validating an inmate as a prison gang member or associate. This section provides that the  
23 institution's gang coordinator or investigator (IGI) should verify the identification of an inmate as  
24 a gang member or associate with "at least three independent source items in the inmate/parolee's  
25 central file." (Cal. Code Regs., tit. 15, § 3378, subd. (c)(2).)

26 5. Respondent alleges that under California Code of Regulations, title 15, section 3378,  
27 the source items used to verify the identification of an inmate as a gang member or associate  
28 include the following:

- Self admission;
- Tattoos and symbols;
- Written material;
- Photographs;
- Staff information;
- Information from other agencies;
- Association with other gang affiliates;
- Information from informants;
- Prior gang-related crimes;
- Legal documentation;
- Receiving visits from known gang affiliates;
- Communication with other gang affiliates;
- Information from debriefing reports.

6. Respondent alleges that section 3378 provides that these independent source items “must contain factual information or, if from a confidential source, meet the test of reliability established in section 3321.” (Cal. Code Regs., tit. 15, § 3378, subd. (c)(2).) Identifying an inmate as a gang “associate” requires three or more independent source items of documentation “indicative of association with validated gang members or associates.” (Cal. Code Regs., tit. 15, § 3378, subd. (c)(4).) A showing of actual gang membership is not required. (*See* Cal. Code Regs., tit. 15, § 3378, subd. (c)(3).)

7. Respondent alleges that the regulations require that gang involvement be verified by a thorough investigation by a gang investigator, also known as the IGI, or their designee. (Cal. Code Regs., tit. 15, § 3378, subd. (c).) The procedure for establishing gang membership or association is referred to as the “validation” process. (*Madrid, supra*, 889 F.Supp. at p. 1241.) When a gang investigator obtains evidence that an inmate has associated with other gang affiliates, this fact is noted in the inmate's central file. (Cal. Code Regs., tit. 15, § 3378, subd. (c); *Madrid, supra*, 889 F.Supp. at p. 1242.)

8. Respondent admits that on July 10, 2007, Correctional Officer S. Russell conducted a search of inmate Pennington's prison cell and discovered a cup with a picture of a dragon and the words, “Joka” and “Weusi.” etched on the outside. (See Ex. D, CDC Form 128-B, July 11, 2007 attached to Petn.; Ex. 2, Pictures of Cup.) The cup was confiscated because the dragon symbolizes characteristics attributed to the founders of the BGF prison gang. (See Ex. D attached to Petn.) “Joka” is a Swahili word for dragon and BGF members and associates believe the

1 power of the dragon protects them and harms their enemies. (See Ex. D attached to Petn.)  
2 Officer Russell indicated that Pennington's cup with the symbols and words etched on the outside  
3 was considered one point toward Pennington's validation as an associate of the BGF prison gang.  
4 (See Ex. D attached to Petn; Ex. 2.)

5 9. Respondent admits that on March 24, 2008, Officer Russell conducted a second  
6 search of Pennington's cell and found a notebook belonging to Pennington. (See Ex. C, CDC  
7 Form 128-B, Mar. 31, 2008 attached to Petn; Ex. 3, Pennington's Notes.) The notebook  
8 contained handwritten quotations from Feeta Drumgo, George Jackson, and John Cluchette, the  
9 "Soledad Brothers" and founders of the BGF. (Ex. C attached to Petn.; Ex. 3.) Drumgo, Jackson,  
10 and Cluchette had assaulted correctional officers and had murdered a correctional officer during a  
11 failed prison escape in 1971. (See Ex. C attached to Petn.; Ex. 3.) Jackson is considered a martyr  
12 by the BGF and his name is contained in the BGF oath and constitution. (See Ex. C attached to  
13 Petn.) Officer Russell indicated that the notebook demonstrated Pennington's association with  
14 the BGF and was considered as another point towards Pennington's validation as a gang  
15 associate. (See Ex. C attached to Petn.)

16 10. Respondent admits that on March 25, 2008, Officer Russell examined Pennington's  
17 personal property and discovered a copy of a newspaper article authored by an inmate, Warren  
18 Jordan. (Ex. B, CDC Form 128-B, July 15, 2008 attached to Petn.; Ex. 4, Newspaper Article, Jan  
19 2, 2008.) Jordan, a validated BGF member, listed BGF related materials, including the books  
20 *Soledad Brother* and *Blood In My Eye*; by George Jackson in the article. (Ex. B attached to Petn.;  
21 Ex. 4.) In the article, Jordan provides his name, CDCR number, housing location at Pelican Bay  
22 State Prison, and encouraged BGF members and associates to contact him. The article was  
23 confiscated. (Ex. B attached to Petn.; Ex. 4.)

24 11. Respondent admits that on July 12, 2008, Officer Russell conducted a third search of  
25 Pennington's cell and found that Pennington possessed a second copy of the January 2008 article  
26 written by inmate Jordan. (Ex. B attached to Petn.) Officer Russell concluded that Pennington's  
27 possession of multiple copies of the article demonstrated that the material was significant to  
28 Pennington's interest in the BGF, established a direct link to the BGF, and that Pennington was

1 “using the article to distribute Jordan’s name, CDCR number, and housing information to other  
2 inmates to ensure other BGF associates/members may communicate with Jordan.” (Ex. B  
3 attached to Petn.) Officer Russell also indicated that Pennington’s possession of multiple copies  
4 of the article was a validation source item establishing Pennington’s association with the BGF.  
5 (Ex. B attached to Petn.)

6 12. Respondent alleges that when an IGI determines that there is sufficient  
7 documentation to validate an inmate, the IGI prepares a “validation package” for submission to  
8 the Special Service Unit (now the Office of Correctional Safety). (*Madrid, supra*, 889 F.Supp. at  
9 p. 1242.) The inmate is informed that he is suspected of gang affiliation, provided notice of the  
10 evidence demonstrating prison-gang affiliation, and is interviewed by an IGI. (*Ibid.*) During the  
11 interview with an IGI, the inmate is given an opportunity to be heard, to present his views to the  
12 IGI, and to contest his alleged gang affiliation. (*Madrid, supra*, 889 F.Supp. at p. 1242.) If the  
13 IGI decides to proceed with the validation process after meeting with the inmate, the IGI submits  
14 the validation package to the Office of Correctional Safety. (*Ibid.*) If the documentation in the  
15 packet is complete, the Office of Correctional Safety will review the packet and determine  
16 whether or not to validate the inmate as a gang member or associate. (*Id.* at p. 1243.)

17 13. Respondent admits that on July 31, 2008, Folsom State Prison’s Investigative  
18 Services Unit completed their investigation into Pennington’s gang status and prepared a gang  
19 validation package for review by the Office of Correctional Safety. (Ex. A, CDC Form 128-B,  
20 Aug. 1, 2008, attached to Petn.; see Decl. of E. Fischer attached to Ret. in HCPB 09-5119.)  
21 Pennington was given notification of the validation interview and disclosure of the source  
22 documents that were considered. (Ex. 5, Validation Interview and Disclosure Form.) Pennington  
23 was interviewed by an IGI and given an opportunity to contest the material in the validation  
24 package. (Ex. A attached to Petn.) Pennington challenged the points in his validation package  
25 and submitted a written statement of his position. (Ex. A attached to Petn.; Ex. 6, Written  
26 Statement.)

27 14. Respondent admits that on August 7, 2008, the source items, the Institutional Gang  
28 Unit’s report, and Pennington’s response were submitted to the Office of Correctional Safety.

(Ex. A, SSU Gang Validation/Rejection Review, Aug. 28, 2008 attached to Petn.) On August 28, 2008, the materials were reviewed and Pennington was validated as a BGF associate. (Ex. A attached to Petn.; see Decl. of E. Fischer attached to Ret. in HCPB 09-5119.) The materials reviewed were: 1) CDCR Form 128-B, July 15, 2008, the newspaper article; 2) CDCR Form 128-B, March 31, 2008, Pennington's notebook; and 3) CDC Form 128-B, July 11, 2007, the cup with BGF symbols. (Ex. A; see Decl. of E. Fischer attached to Ret. in HCPB 09-5119.)

15. Respondent admits that because validated prison gang associates pose a threat to the security of the institution, the Classification Staff Representative endorsed Pennington to Pelican Bay State Prison to serve an indeterminate term in the Security Housing Unit (SHU). (Ex. 7, CSR Action, Oct. 7, 2008.)

16. On May 5, 2009, Pennington refused to appear before Pelican Bay's Unit Classification Committee for a 180-day review of this custody status.<sup>1</sup> At that hearing, the committee decided to continue Pennington's indefinite detention in the SHU because Pennington was a validated BGF associate, and prison gangs are known to be involved in criminal activities that threaten the safety of others and institution security, thus requiring continued segregation from the general population. (Ex. 8, UCC, May 5, 2009.)

17. Respondent alleges that the Security Housing Unit is a housing complex separated from the general population. (Cal. Code Regs. tit. 15, §§ 3341.5, subd. (c), 3343 [describing conditions of segregated housing]; see also *Madrid, supra*, 889 F.Supp. at p. 1155.) Assignment to the SHU is not based on the inmate's underlying offense; rather the SHU is an administrative means of managing inmates who commit disciplinary infractions while in prison, or whose conduct endangers the safety of others or the security of the institution. (Cal Code Regs. § 3341.5, subd. (c); *Madrid, supra*, 889 F.Supp at 1155.)

18. Respondent affirmatively alleges that Pennington fails to state or establish any grounds for habeas corpus relief.

<sup>1</sup> "An inmate assigned to a security housing unit on an indeterminate SHU term shall be reviewed by a classification committee at least every 180 days for consideration of release to the general inmate population." (Cal. Code Regs., tit. 15, § 3341.5, subd. (c)(A)(1).) Pennington does not dispute that he has received these classification committee reviews.

1           19. Respondent denies that prison officials' decision to validate Pennington as a BGF  
2 associate was not supported by some evidence.

3           20. Respondent denies that Pennington has a protected due process liberty interest or a  
4 liberty interest in being housed with the prison's general population. (*Madrid, supra*, 889 F.  
5 Supp. at pp. 1260-1262.)

6           21. Respondent denies that Pennington's due process rights, or any constitutional or  
7 statutory rights were violated.

8           22. Respondent denies that an evidentiary hearing is necessary because there is no dispute  
9 concerning a material fact. (Cal. Rules of Court, rule 4.551(f).)

10          23. Except as expressly admitted in this return, respondent denies the allegations of the  
11 petition, generally and specifically.

12          This return is based on these allegations and the attached exhibits, declaration, and  
13 memorandum of points and authorities, all of which are incorporated by reference. For the  
14 reasons stated in this return, respondent requests that the order to show cause be discharged, that  
15 the petition should be denied, and that this action should be dismissed.

## 16                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

### 17   **ARGUMENT**

#### 18 19           **I. THE OFFICE OF CORRECTIONAL SAFETY'S DECISION TO VALIDATE** 20           **PENNINGTON AS A VALIDATED BGF ASSOCIATE WAS SUPPORTED BY** 21           **SOME EVIDENCE.**

22          The Office of Correctional Safety's decision to validate Pennington as a BGF gang  
23 associate was supported by some evidence. (See Decl. of E. Fischer attached to Ret. in HCPB 09-  
24 5119.) A prison administrator's decision to validate an inmate as an associate of a prison gang  
25 must be based on some evidence. (See *Madrid, supra*, 889 F.Supp. at p. 1278; *Bruce v. Ylst*  
26 (2003) 351 F.3d 1283, 1287-88 [the "some-evidence" standard applies to an inmate's validation  
27 as a gang member or associate], citing *Superintendent v. Hill* (1985) 472 U.S. 445, 455.)  
28          Determining if this some-evidence standard has been met does not require an "examination of the  
entire record, independent assessment of the credibility of witnesses, or weighing of the

evidence.” (*Hill*, at pp. 455-456.) Instead, because this standard is “minimally stringent,” the relevant question is “whether there is any evidence in the record that could support the conclusion . . . .” (*Ibid.*; see also *In re Rosenkrantz* (2002) 29 Cal.4th 616, 664-665 [“some-evidence” standard is satisfied so long as there is even a “modicum of evidence,” i.e., “any evidence in the record.”].)

Here, there is a modicum of evidence supporting the validation decision. On July 10, 2007, a cell search of Pennington’s personal property revealed a cup containing an etched drawing of a dragon and the Swahili words “Joka” and “Weusi.” (Ex. D attached to Petn.; Ex. 2) The dragon is a symbol used by the BGF to represent their power over their enemies. (Ex. D attached to Petn.) On March 24, 2008, a second cell search of Pennington’s person property revealed a notebook containing quotations from the “Soledad Brothers,” who are the founding members of the BGF and are revered as icons by BGF members. (Ex. C attached to Petn.; Ex. 3.) In addition, there was a newspaper article by BGF member Warren Jordan listing BGF material for members and associates to read, and requesting inmates to communicate with him by providing his CDCR number and cell number. (Ex. B attached to Petn.; Ex. 4.) In a third cell search on July 12, 2008, prison staff discovered a copy of the same newspaper article by Warren Jordan. (Ex. B attached to Petn.) Because prison staff had found multiple copies of the same article, the Investigative Services Unit determined that this demonstrated Pennington’s desire to communicate with Jordan or provide the information to other inmates so that they could communicate with Jordan. (Ex. B attached to Petn.) Thus, the IGI concluded and the Office of Correctional Safety verified that the article and multiple copies demonstrated a direct link to a BGF member. (Ex. B, see Decl. of E. Fischer attached to Ret. in HCPB 09-5119.) Thus, the decision to validate Pennington as a BGF associate was supported by some evidence. (See Decl. of E. Fischer attached to Ret. in HCPB 09-5119.) Because a gang validation requires three source items, including one direct link, the above listed items were sufficient for validating Pennington as a BGF associate. (Cal. Code Regs., tit. 15, § 3378, subd. (c)(8)(G), (L).)

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# **EXHIBIT 1**

## ABSTRACT OF JUDGMENT - PRISON COMMITMENT

FORM DSL 290

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MERCED

COURT I.D.

2,41,0,0

BRANCH

PEOPLE OF THE STATE OF CALIFORNIA versus  
DEFENDANT: DIETRICH JEROME PENNINGTON

AKA:

☒ PRESENT☐ NOT PRESENT

CASE NUMBER (S)

16581

92 APR 27 PM 1:54

COMMITMENT TO STATE PRISON  
ABSTRACT OF JUDGMENTAMENDED  
ABSTRACT ☐

DATE OF HEARING (MO) (DAY) (YR)

4-27-92

DEPT. NO.

II

JUDGE

William T. Ivey

CLERK

Shirley Johnson

REPORTER

Don Lee

COUNSEL FOR PEOPLE

Joseph Tresidder

COUNSEL FOR DEFENDANT

William Davis

PROBATION NO. OR PROBATION OFFICER

Tom Ferrari

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES (OR ALTERNATE FELONY/MISDEMEANORS):

☐ ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT

(NUMBER OF PAGES)

ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT _____ (NUMBER OF PAGES)				SENTENCE RELATION																																																																																																																																																																																																																																																																																						
COUNT	CODE	SECTION NUMBER	CRIME	TRIAL/CRIME COURTESY	DATE OF CONVICTION			CONVICTED BY			HEARD	CONVICTION	CONSECUTIVE TO PREVIOUS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO THIS	CONSECUTIVE TO 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2. ENHANCEMENTS charged and found true TIED TO SPECIFIC COUNTS (mainly in the § 12022-series including WEAPONS, INJURY, LARGE AMOUNTS OF CONTROLLED SUBSTANCES, BAIL STATUS, ETC.). For each count list enhancements horizontally. Enter time imposed for each or "S" for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385. Add up time for enhancements on each line and enter time total in right-hand column.

Count	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Total
2	12022.7	S									
2	12202(b)	S									

3. ENHANCEMENTS charged and found true FOR PRIOR CONVICTIONS OR PRIOR PRISON TERMS (mainly § 667-series) and OTHER. List all enhancements based on prior convictions or prior prison terms charged and found true. If 2 or more under the same section, repeat it for each enhancement (e.g., if 2 non-violent prior prison terms under § 667.5(b) list § 667.5(b) 2 times). Enter time imposed for each or "S" for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385. Add time for these enhancements and enter total in right-hand column. Also enter here any other enhancement not provided for in space 2.

Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Total

4. INCOMPLETED SENTENCE(S) CONSECUTIVE:

COUNTY	CASE NUMBER	CREDIT FOR TIME SERVED

5. OTHER ORDERS \$5,000 restitution fine imposed to be collected by the Director of Corrections.

Use additional sheets of plain paper if necessary.

6. TOTAL TIME IMPOSED ON ALL ATTACHMENT PAGES (FORM DSL 290-A):

7. TIME STAYED TO COMPLY WITH 5-YEAR OR 10-YEAR LIMIT ON SUBORDINATE TERMS, DOUBLE-BASED-TERM LIMIT, ETC. (Do not include § 654 stays or discretionary stays of term for enhancements.)	0
8. TOTAL TERM IMPOSED:	0

9. EXECUTION OF SENTENCE IMPOSED:

A. ☒ AT INITIAL SENTENCING  
HEARINGB. ☐ AT RESENTENCING PURSUANT TO  
DECISION ON APPEALC. ☐ AFTER REVOCATION OF  
PROBATIOND. ☐ AT RESENTENCING PURSUANT TO RECALL  
OF COMMITMENT (PC § 1170(d))E. ☐ OTHER10. DATE OF SENTENCE PRONOUNCED  
(MO) (DAY) (YR)4-27-92CREDIT FOR  
TIME SPENT  
IN CUSTODYTOTAL DAYS  
198

INCLUDING:

ACTUAL LOCAL  
TIME132LOCAL CONDUCT  
CREDITS66

STATE INSTITUTIONS

☐ DMH☐ CDC

11. DEFENDANT IS REMANDER TO THE CUSTODY OF THE SHERIFF, TO BE DELIVERED:

☒ FORTHWITH☐ AFTER 48 HOURS,  
EXCLUDING SATURDAYS,  
SUNDAYS AND HOLIDAYSINTO THE CUSTODY OF  
THE DIRECTOR OF  
CORRECTIONS AT THE  
RECEPTION-GUIDANCE  
CENTER LOCATED AT:☐ CALIF. INSTITUTION FOR  
WOMEN - FRONTIERA☐ CALIF. MEDICAL  
FACILITY - VACAVILLE☐ CALIF. INSTITUTION  
FOR MEN - CHINO☒ DEUEL VOC. INST☐ OTHER (SPECIFY):

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE

Shirley Johnson

DATE

4-27-92

insert name of court, branch court, if any, and mailing address  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF

MERCED

FOR COURT USE ONLY

FILED

92 APR 27 PM 1:54

PEOPLE OF THE STATE OF CALIFORNIA

DEFENDANT: DEITRICH JEROME PENNINGTON

☒ Present

☐ Not Present

☒ JUDGMENT OF COMMITMENT TO:  
☐ ORDER GRANTING PROBATION

☒ STATE PRISON ☐ COUNTY JAIL  
☐ AND MINUTE ORDER

CASE NUMBER:  
16581

Date of hearing:  
4-27-92

Dept. No.  
II

Judge:  
William T. Ivey

Clerk:  
S. Johnson

Reporter:  
Don Lee

Counsel for People:  
Joseph Tresidder

Counsel for defendant:  
William Davis

Probation Officer:  
Tom Ferrari

1 Defendant was convicted of the commission of the following crime on (Date)

Count

Code Section

Crime

Degree

By Jury, Court or Plea (Specify)

3

664/187 PC

Attempted Murder

Plea

2 Defendant ☐ was arraigned ☒ waived arraignment for judgment.

3 The court, having read and considered the probation report and no legal cause having been shown why judgment should not be pronounced

a. ☒ Sentences defendant to State Prison for the term ~~prescribed by law~~ Life with possibility of parole.

b. ☐ Specifies, pursuant to Pen. C. 1202b, the minimum term of imprisonment shall be six months as to count:

c. ☐ Sentences defendant to County Jail for the period of (Specify number of days):

d. ☐ Suspends imposition of sentence and defendant is placed on probation for the period of:

☒ Sentences defendant on Enhancement #1, 12022.7 for 3 years.  
☒ Sentences defendant on Enhancement #2, 12202(b) for 1 year. Times to be served consecutively to each other and Count 3.

4 ☐ Defendant, convicted of more than one count, shall

a ☐ serve the sentence as to each count as follows:

Count

Consecutive With

Concurrent with

b ☐ serve the counts made consecutive in the following order

5 Defendant shall serve this sentence with respect to any prior uncompleted sentence a. ☐ concurrently. b. ☐ consecutively

c ☐ as set forth below or in attachment 5c.

6 Execution of sentence is

a. ☐ stayed on the following count:

when the sentence is completed as to count

b. ☐ suspended and defendant is placed on probation for the period of:

☐ upon conditions set forth in attachment 6b.

7. ☐ No allegation to enhance punishment was made in count.

8. ☐ It was alleged

a. ☐ Defendant was armed with a deadly weapon at the time of the commission or attempted commission of the crime charged in count:   
 ~~the allegation stricken and~~

- b. ☐ Defendant used a firearm in ☐ and allegation stricken to count: ☐
- c. ☐ Defendant was armed at the time of arrest with a concealed deadly weapon within the meaning of Pen. C. 3024 ☐ and allegation stricken.
- d. ☐ Other (Specify and indicate if stricken):
9. ☐ The Court finds the defendant
- a. ☒ was armed at the time of commission or attempted commission of the crime with a deadly weapon within the meaning of
- (1) ☐ Pen C. 3024 as to count: ☐ but strikes the finding as to count:
- (2) ☒ Pen C. 12022 as to count: ☐ but strikes the finding as to count:
- (3) ☐ Pen C. 1203 (Specify weapon): ☐ but strikes the finding as to count:
- b. ☐ was not armed at the time of commission or attempted commission of the crime within the meaning of
- (1) ☐ Pen C. 3024 as to count:
- (2) ☐ Pen C. 12022 as to count:
- (3) ☐ Pen C. 1203 as to count:
- c. ☐ did use a firearm as to count: ☐ but strikes the finding as to count:
- (1) ☐ The use was one use for the following counts: The additional penalty shall
- run consecutively to the sentence on the last count to be served.
- d. ☐ did not use a firearm as to count:
- e. ☐ was armed at the time of arrest with a concealed deadly weapon within the meaning of Pen. C. 3024 ☐ but strikes the finding.
- f. ☐ was not armed at the time of arrest with a concealed deadly weapon within the meaning of Pen. C. 3024.
- g. ☐ Other (Specify and indicate if stricken):

10. ☐ Prior convictions which affect defendant's sentence were alleged and disposed of ☐ as follows ☐ as set forth in attachment 10.

Conviction date	Jurisdiction	Crime and code Section	Applies to Count	Disposition
-----------------	--------------	------------------------	------------------	-------------

11. The court finds defendant: a. ☐ is ☐ is not an habitual criminal under Pen C. 644a
- b. ☐ is ☐ is not an habitual criminal under Pen C. 644b
12. The court pronounced sentence on (Date) and defendant was held in custody, through and including
- the date of pronouncement of sentence for (Total no. of days) as follows
- Count Time other than Dept. of Corrections Dept. of Corrections Time

Credit for time served 198 days. (132 local time plus 66 behavior credits.)

13. Defendant is remanded to the custody of the Sheriff
- a. ☐ For the period of (Specify no. of days) upon conditions and recommendations set forth in attachment 13a
- b. ☐ To be delivered ☐ at the earliest convenient time ☐ after 48 hours, excluding Saturdays, Sundays and holidays
- [Pen C. 1203c] into the custody of the Director of Corrections at
- (1) California Institution for Women—Frontera (3) California Institution for Men—Chino
- (2) California Men's Facility—Vallejo (4) Other Deuel Vocational Institute
14. The court requests a copy of the diagnostic study and recommendations as provided in Pen C. 1168.
15. The court advised defendant of all appeal rights as required in CRC Rule 250 and defendant acknowledged understanding them
16. Other (See attachment 16)
- Dated April 27, 1992

(Type or print name)

TOTAL NO. of boxes checked

### CLERK'S CERTIFICATE

I hereby certify that the foregoing is a correct copy of the original on file in my office.

Clerk of the superior Court

MAY 12 1992

By

*Shirley Johnson*

Deputy

[Seal]

# **EXHIBIT 2**

DO NOT ISSUE TO  
INMATE

DO NOT ISSUE TO  
INMATE

DO NOT ISSUE TO  
INMATE

DO NOT ISSUE TO  
INMATE

DO NOT ISSUE TO  
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DO NOT ISSUE TO  
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DO NOT ISSUE TO  
INMATE

# EXHIBIT 3

(active)

With the cold of winter, there could not be the warmth of spring. Calamity has hardened - and turned my mind to steel (Ho Chi Minh.)

To break this vicious cycle and to impress upon the world the unrestrained political repression as well as the subhuman conditions of existence which characterize prison life.

imperialism, which this gestapo system perpetuates. It's this which we have to look at and understand in order to recognize the inhumanity inflicted upon the masses of the people here in America and abroad. As Brother Malcolm X once said, "We as people, as human beings have the basic human right to eliminate the conditions that have and are continuously destroying us."

The decadence and corruption in the present day society and in these concentration camps must be dealt with by the people, and the only way we can deal with it is uniting, becoming as one. What I am trying to relay is the fact that we are all prisoners, and under the yoke of fascist enslavement. Anyone who can deny this fact isn't really concerned about liberation; he considers himself free and the attitude relates directly to the petty-bourgeois class of society.

In conclusion let me say on behalf of all of us in the maximum, please don't reject and forget us because this allows the monster to brutalize, murder and treat us inhumanly. We are of you, we love you and struggle with you. Power to the People — Liberation in Our Time! Fleeta  
Drumgo

government is designed to oppress, exploit and intimidate, all that are not classified as a white Anglo-Saxon-bourgeois ruling clique. The hatred, violence and destruction imbedded in the system is the same fascist repression that is destroying the people in general, Black people in particular. Knowing this fact it is not difficult to understand that America is a prison. As Brother H.P.N. stated, the only difference is that one is maximum and the other minimum security.

It seems at times that the oppression and violence inflicted upon us here in the maximum security is more intense than that inflicted upon us in the minimum security, but really it's utterly impossible for me or any of us here to distinguish the oppression and violence we are all victimized by. I am constantly thinking about unemployment, underemployment, poverty and malnutrition that are the basic facts of our existence; it's this which sends persons to these concentration camps; it's this which causes so-called crime in general.

I like to express that there's a growing awareness behind the walls; we're seeing through the madness of capitalism, class interest, surplus value and

"We must build a new world. All other generations have passed this responsibility on and it is time to stop the clocks and seize the time. Change, destroy and rebuild. It is time for us to build a new world free of selfishness, racism, ~~the~~ narrow nationalism and the desire of any group to claim this world as their own. The universe belongs to the people — to love — to create — for each other."

29 December 1970

love spelled the same but meaning  
spiritually much more  
meaning that we realize the creative  
forces to be energy and that we as a  
part of that must  
come together  
come  
together

was — there are tears in my laughter

A Letter from Fleeta

Dear Brothers and Sister

the Department of Corrections doesn't exist! All institutions under such titles are barbaric, oppressive, racist and murderous institutions. This system of

21 december 1970

for paula:

(who ran from the camp  
and was eventually caught)

hopes that render me speechless  
fly through my soul  
the reality of now is

too much to accept the  
racism, fascism and oppression  
we suffer / have suffered is  
numbing my soul

if it is true that they  
have stifled your attempt  
to breathe air and see  
life and be a part of the  
chaos that is the streets  
then i cry inside

because no one will  
understand outside tears

for you — or those like you —

strange it is for you for i — only

know your face and soul personalities

sometimes  
don't matter...

but that's good enough you are a  
part of me sister love the part of me  
that has been and will one day be...  
every door is not locked

Noises

Sounds

unspoken words

feelings repressed because

the prison walls are also

soul walls

barriers

If only all barriers could be removed

and we could walk / talk / sing

be

free of all psychological, spiritual

political, economic

boundaries

all of us all the freedom lovers of

the world but especially

right now — prisoners.

exclusion constituted a violation of the Fourteenth Amendment to the U.S. Constitution. *Powell v. Alabama*, involving Ozie Powell, another of the Scottsboro defendants, established the principle that in a capital prosecution the state must provide the indigent defendant with counsel.

~~\*\*\*~~ From 1930 to 1969 out of a total of 3,815 executions, 2,066 involved Black people - well over 50 percent - when Blacks constitute some 15 percent of the population.

Concerning  
Marie Hill  
25 years of age  
was found guilty  
of first-degree  
murder and was  
sentenced to die  
October 1968

In their appeal to the U.S. Supreme Court, her lawyers have stated: "Such a penalty - not law, but terror - is the instrument of totalitarian government. It is a cruel and unusual punishment, forbidden by the Eighth Amendment"

Emmett Till was lynched outside the law,  
Marie Hill is being lynched under the color of law.

Poems from  
Prison

Ericka

Huggins

tell

SKINNY.

plain, i am

ERICKA, 22,

fuzzy hair

droopy eyes

long feet

i love people

love nature

love love

i am a revolutionary

Nothing special

one sex

one life

willing to give it ready to die

no immediate provocation; not one shot had been fired from the house. And the occupants, including the two wounded and a pregnant ABLF member, were forced to crawl out on their stomachs.

There other examples - The GPP, Ahmed Evans, Soledad 3 January 13, 1970, Hugo Pinell, H. Rap Brown, Lee Otis Johnson, Walter Collins, let's not forget the Scottsboro Boys\*. Nine Black youths were arrested in Jackson County, Alabama, in March 1931, and charged with the rape of two white girls. Their innocence was incontestable and a worldwide campaign was conducted to save their lives (upon conviction they had been sentenced to die in the electric chair) and ultimately to secure their freedom. This mass movement to free the Scottsboro Boys initiated a series of reforms in criminal procedures which persisted for some twenty years. The two most important cases were *Norris v. Alabama* (1935) and *Powell v. Alabama* (1939). In the first case the United States Supreme Court ordered new trials for defendants Haywood Patterson and Clarence Norris on grounds that Blacks had for years been barred from jury duty in Jackson and Morgan counties, Alabama, where the Scottsboro trials occurred, and the

pp. 53, 62, 112, 163, and 211, respectively. See the review/essay of this book by Herbert Aptheker, "Bonfield: The Nixon Model Planner," Political Affairs, December 1970.

\* See Susan Castro, "Line of Defense Against Fascism," People's World, June 1970, p. 10.

<sup>66</sup> Penal code 4500, assault on a non-inmate by a life-terminer, carrying a mandatory death penalty."

\*\* "I'm a Political Prisoner, victimized for none other than my organizing influential and effective Human Rights activities to cure the conspicuous and detestable ills of this society."

Example. Birmingham Alabama's Black community has long lived under the threat of racist terror and officially sanctioned violence. The bombing of the 16<sup>th</sup> Street Baptist Church in 1963, which left four young sisters dead, brutally unmasked Southern racism for eyes of the world to behold.

On September 1, 1970, 23 members of a sheriff's posse converged upon a house where five members of the Alabama Black Liberation Front were visiting and without warning, riddled the house with bullets. Even according to police testimony, there had been

→ clinical psychologist, tells us in a recent  
see the especially interview that prisoner suffer from "retarded  
good article emotional growth." The warden continues: "The  
by Jessica first goal of the prison is to isolate people  
Mitford, the community doesn't want at large. Safe  
Usual confinement is the goal. The second obligation  
Punishment, is a reasonably good housekeeping job, the old  
The California Prisoners, The humanitarian treatment concept." That is, once  
Atlantic Monthly, the prisoner is adequately confined and isolated, he  
March 1971. may be treated for his emotional and psychologi-  
cal maladies - which he is assumed to suffer  
by virtue of the fact that he is a prisoner. We  
have a completely circular method of reason-  
ing. It is a closed-circuit system from which  
there is no apparent escape.

The alleged criminal characteristics of the prisoner  
must in accord with this logical sequence, arise from  
within the prisoner himself - the prisoner is "crime  
prone" like some people are supposed to be "acciden-  
prone." In the nineteenth century, leading theorists  
put forth the idea that the criminal had certain  
physical characteristics which shaped his  
destiny of crime, e.g. slanted eyes and a broad  
forehead. The alleged depravity and criminality of the

By almost any standard the American prison betrays itself as a system striving toward unmitigated totalitarianism. The logic of totalitarianism defines the prison's internal processes as well as its relationship to the world without.

We have witnessed Birmingham, Orangeburg, Jackson State, Kent State, Mylai, San Quentin, Aug. 21, 1970 - the list is unending. None emerged ex nihilo; rather all crystallized and attested to profound and extensive social infirmity. Perhaps, though, the events at Attica finally awakened greater numbers of people from their socially inflicted slumber. If this be true, they must recognize that their duty is twofold: to subject governments and prison bureaucracies to unqualified criticism and to acknowledge the rational and human kernel of the struggles unfolding behind prison walls through forthright supportive action.

→ As George Jackson put it: "The text-books on criminology like to advance the idea that the prisoners are mentally defective. There is only the merest suggestion that the system itself is at fault..." Indeed, the assistant warden at San Quentin, who is by profession a

George Jackson, *San Quentin*  
Soledad Brothers, 1970, p. 29  
Books, New York

arrested or accused Black folk have no defense. There is desperate need nationwide organizations to oppose this national racket of railroading to jails and chain gangs the poor, friendless and Black."

Autobiography of W.E.B. Du Bois, International Publishers, New York, 1968, p.390.

Nat Turner and John Brown can be viewed as examples of the political prisoner who has actually committed an act which is defined by the state as "criminal." They killed and were consequently tried for murder. But did they commit murder? This raises the question of whether American revolutionaries had murdered the British in their struggle for liberation. Nat Turner and his followers killed some 65 white people, yet shortly before the Revolt had begun, Nat is reputed to have said to the other rebelling slaves: "Remember that ours is not war for robbery nor ~~to~~ to satisfy our passions, it is a struggle for freedom. Ours must be deeds not words." Herbert Aptheker, Nat Turner's Slave Rebellion, Grove Press, N.Y. 1968, p.45. According to Aptheker these are not Nat Turner's exact words.

poor - because they are poor - is an even older theme in class society, e.g. the ancient idea of the "dangerous poor"; and the oft-repeated phrase of the Founding Fathers, "the rich the wellborn and [therefore] the able." Now our leading penologists and criminologists are much more subtle and sophisticated. They have a veneer of humanitarian instinct but it quickly falls away revealing the racist, anti-human core.

→ Now, it is argued, the criminal may look like any-  
James V. McConnell body else; but he has acquired certain psychological  
"Brainwashing the Criminals," characteristics which dictate his pattern of criminal  
Psychology behavior. To "unacquire" these characteristics a leading  
Today, behavioral scientist James V. McConnell, explains that:  
April 1970, "We have but two means of educating people or rats or  
Vol. 3, No. 11, flatworms - we can either reward them or punish them.  
The treatment for what McConnell calls "brainwashing"  
the criminals" to ultimately restructure their entire  
personality is an alternating sequence of reward and  
punishment (including especially so-called Shock Treatment,  
until the prisoner has "learned" what the society defines  
as non-criminal behavior.

The source of criminality then is psychological rather than social. The solution to the problem is obvious: quarantine the afflicted individuals; then subject them to

treatment. Hence we have correctional facilities rather than prisons; and we have inmates (as in any asylum for the insane) rather than prisoners.

White racism is essentially responsible for the explosive mixture which has been accumulating in our cities since the end of World War II.

— Kerner Commission Report, 1968.

\* Herbert Marcuse, *Essay on Liberation*, Beacon Press, Boston, 1970, p. 74

\* Time magazine, "U.S. Prisons: Schools for Crime," January 18, 1971.

\* Theodore R. Sarbin, "The Myth of the Criminal Type," Monday Evening Papers #18, Center for Advanced Studies, Wesleyan University, 1969.

\* Herbert L. Packer, "Crimes of Progress," New York Review of Books, October 23, 1969.

\* Louis Adamic, *Dynamite: The History of Class Violence in America*, Peter Smith, Gloucester, Mass., 1963, p. 312.

\* William Z. Foster, *The Negro People in American History*, International Publishers, New York, 1954, pp. 169-170 (quoting Herbert Aptheker).

\* Edward C. Banfield, *The Unheavenly City: The Nature and Future of Our Urban Crisis*, Little, Brown, Boston, 1972

Notes: If they come in 7 Morning and other  
Voices of Resistance Angela Y. Davis Political Prisoners  
Ruchell Magee the Soledad Brothers

For, if they take you in the morning, they will be coming for us that night.

In 1951, W.E.B. DuBois as Chairman of the Peace Information Center, was indicted by the Federal government for "failure to register as an agent of a foreign principle." In assessing this ordeal which occurred in the ninth decade of his life, he turned his attention to the inhabitants of the nation's jails and prisons.

What turns me cold in all this experience is the certainty that thousands of innocent victims are in jail today because they had neither money nor friends to help them. The eyes of the world were on our trial despite the desperate efforts of press and radio to suppress the facts and cloud the real issues; the courage and money of friends and of strangers who dared stand for a principle free me; but God only knows how many who were as innocent as I and my colleagues are today in hell. They daily stagger out of prison doors embittered, vengeful, hopeless, ruined. And of this army of wronged, the proportion of Negroes is frightful. We protect and defend sensational cases where Negroes are involved. But the great mass of

# **EXHIBIT 4**

# BEHIND BENEVOLENT LINES

## Guards confiscate 'revolutionary' materials at Pelican Bay

*'White rookies strive to defile Black history and culture'*

by Warren Jordan

An open letter to Sister Kiihu Nyasha:

This racial profiling started on May 23, 2007, when three white racist IGI (institution gang investigators) came to search my cell. They stole the following items from my cell that I've had on wards since 1973: 16 personal photos of George Jackson, Jeffrey Khatori Gauden, Jonathan Jackson and Angela Davis, a BGF Constitution, one set of ODs and one copy of "Basic Tenets of Revolutionary Black Nationalism" by Mohammad Ahmad, published in December of 1977.

They claimed that all of this Black literature was gang material. Mind you, I had all of this since 1973. They tried to use the 16 photos in order to give me another six years in the SHU (security housing unit) even though I've already been in the SHU for 36 straight years as of Oct. 31, 2007.

I appealed to mail out my 16 photos and the IGI could not use them as gang material because they are over six years old and they do not fall within the time limitation per Castillo vs. Terhune

(Case No. C94-2847). So to cover up their racist policy, they simply say they are going to keep my personal property.

The IGI is involved in guard corruption, cover-ups and conspiracy in order to keep me and other Blacks in the SHU. My attorney has documents that prove guard corruption, cover-ups and conspiracies at every turn. All of these CDC 1030 forms relate to the BGF Constitution as a literature item source.

The new guidelines have been violated by this corrupt guard. Number 8 states: "The CDC can no longer use one incident reported by several sources (confidential or otherwise) as multiple source item and instead must count one incident, regardless of the number of sources, as one source item."

These racist and corrupt guards should be exposed at all times. They are also giving Blacks 1030 forms for contraband for having "Soledad Brother" or "Blood in My Eye" by George L. Jackson. They are placing these Blacks in the SHU for merely having such books as gang material. This is racial profiling in prison.

If Blacks had books by George Washington or Thomas Jefferson, it's no problem. These corrupt guards of the IGI are all white rookie guards who strive to defile Black history and culture within

prison. I am merely doing the paperwork and going through the motions because I will not allow these cowards to steal my property and defile me.

I'm positive that I'll end up in another prison trial with another life sentence in the future. I'm fine with that outcome for myself and I can live with the consequences. I simply desire for you to please publicly expose these racist cowards as much as possible.

In prison, I fight very odious battles and accept any legal consequences. I request absolutely no prison support, nor do I need any. Please give my best to Willie Tate and David Johnson. I've known them since 1973 at San Quentin.

Please acknowledge this and if you don't get it, I'll get an attorney to give it to you. These white racist cops have a history of stealing mail that exposes their corruption, cover-ups and conspiracies, so please let me know, sister. Thank you a lot. Take care and be safe.

Your Brother,  
Warren Jordan

Write to: Warren Jordan, B-42117, D-3-213, Pelican Bay State Prison, P.O. Box 7000, Crescent City, CA 95531. He writes: "P.S. I'd appreciate an 8x10 2008 calendar if you have an extra one. Large print please: I have bad eyes."

## No bail increase

Bryant St., SF

by Claude Marks

Judge Philip Moscone, who is

appear again on Jan. 17 on that matter in Florida.

The prosecution in the SF 8 case had filed a motion to revoke bail or increase it from \$250,000

# **EXHIBIT 5**

# VALIDATION INTERVIEW NOTIFICATION AND DISCLOSURE FORM

An inmate is entitled to be heard in regard to evidence relied upon in the validation of the inmate as a member or associate of a prison gang or disruptive group. The Institution Gang Investigator (IGI) or designee shall interview the inmate. The interview shall be documented and include the inmate's opinion on the evidence relied upon. The inmate is entitled to a written copy of all source documents relied upon in consideration of his/her validation as a member or associate of a prison gang or disruptive group. All evidence relied upon in the validation shall be disclosed to the inmate not less than 24 hours prior to the interview and be disclosed in sufficient detail to enable the inmate to prepare a response. Confidential information shall be disclosed via CDC Form 1030, Confidential Information Disclosure Form.

## PART I NOTICE OF INTENT TO INTERVIEW

NAME <b>PENNINGTON</b>	CDC NUMBER <b>H-32632</b>	INSTITUTION/PRISON <b>FOLSOM STATE PRISON</b>	HOUSING <b>AD-SEG</b>
---------------------------	------------------------------	--	--------------------------

On 7/30/08, an investigation was completed into your suspected membership and/or association with a prison gang and /or disruptive group recognized by the California Department of Corrections and Rehabilitation as defined in Section 3000 of the California Code of Regulations. The investigation revealed sufficient evidence to identify you as a:

☐ MEMBER      ☒ ASSOCIATE      OF THE      ☒ PRISON GANG      ☐ DISRUPTIVE GROUP:  
**BLACK GUERRILLA FAMILY**

An interview shall be held not less than 24 hours from the date of this notification unless the inmate refuses such interview. During this interview you will be given an opportunity to be heard and your opinion documented relative to the evidence considered in this validation. Written rebuttals may be submitted at the time of the interview.

## PART II DISCLOSURE OF EVIDENCE

The following source documents were considered in your identification as a member or associate of the aforementioned prison gang or disruptive group. All confidential documents shall be disclosed via CDC Form 1030, Confidential Information disclosure form. Each source document shall be identified by type (I.E. CDC 128B, CDC 115, Confidential Report, etc.), date, and author of the report.

☐ SELF-ADMISSION: \_\_\_\_\_

☒ TATTOOS AND SYMBOLS: 128B dated 7/11/07, authored by S. Russell.

☒ WRITTEN MATERIAL: 128B dated 3/31/08, authored by S. Russell.

☐ PHOTOGRAPHS: \_\_\_\_\_

☐ STAFF INFORMATION: \_\_\_\_\_

☐ OTHER AGENCIES: \_\_\_\_\_

☐ ASSOCIATION: \_\_\_\_\_

☐ INFORMANTS: \_\_\_\_\_

☐ OFFENSES (GANG RELATED): \_\_\_\_\_

☐ LEGAL DOCUMENTS: \_\_\_\_\_

☐ VISITORS: \_\_\_\_\_

☒ COMMUNICATIONS (MAIL/NOTES) 128B dated 7/15/08, (Direct Link) authored by S. Russell.

☐ DEBRIEFING REPORTS: \_\_\_\_\_

## PART III: RECEIPT OF SOURCE ITEMS

<input type="checkbox"/> I acknowledge receipt of all aforementioned source documents in order to review for a 24-hour review period.	NAME	DATE	TIME
<input checked="" type="checkbox"/> Inmate received a copy of all aforementioned source items but refused to sign Validation Disclosure Form	NAME <b>D. Arriola</b>	DATE <b>7/31/08</b>	TIME <b>0937</b>

## PART IV DISCLOSURE AND WAIVER

<input checked="" type="checkbox"/> I have reviewed all of the aforementioned source documents and wish to be interviewed at this time about such documents	NAME <b>PENNINGTON</b>	DATE <b>1 Aug 2008</b>	TIME
<input type="checkbox"/> I acknowledge receipt of all aforementioned source documents and have nothing to discuss about such documents	NAME	DATE	TIME
<input type="checkbox"/> Inmate refused to be interviewed and refused to sign Validation Disclosure Form	NAME	DATE	TIME

Copies of all aforementioned documents were provided to the inmate on 7/31/08 and on 8/1/08 this investigator attempted to conduct an interview with the inmate. All confidential information has been disclosed via CDC Form 1030, Confidential Information Disclosure Form.

NAME <b>D. Arriola</b>	DATE <b>8/1/08</b>
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# **EXHIBIT 6**

Finished 1 Aug 2008

While at work in PIA Metal Fab Unit 3, was placed in cuffs and taken to custody, where upon placed in Administrative Segregation. ISU Officer Arraras, informed me I was being validation pictures of upper body was taken by ISU Officer. This has been an on going problem since September 2007, when I first found out about a gang information general chrono CDC 128-B being placed in my C-File. I didn't find out until, I went to my Board of Prison Term, I've never received any copy of the 128-B's until the time of the arrest. Inmates are to receive copies of 128-B's at which time they are issued by issuing officer, which was Officer S. Russell. I've filed a bar of officer misconduct, that is currently at the Director's level which is overdue and has yet to be answered.

All the while I'm constantly being harass by Officer S. Russell, as well as ISU. I've informed Officer S. Russell, ISU, that I've never been and have no desire to be apart of are associate with any prison gang. Officer S. Russell, and ISU, continues to be a gang themselves in th deeds and action. My Appeal Process, is continuing to be put off by the Appeal Coordinators here at Folsom State Prison, as well as at the Director's level which is ~~in~~ violation of my due process. Where is there law against what an individual chooses to read and take note on.

I feel my first amendment rights have been violated, my program which was a positive one has been disrupted. I'm request action be taken concerning this disruption. I'd like Officer S. Russell's bias behavior be investigated, for he continues to target African American Inmates, and <sup>has</sup> been since he's been at Folsom State Prison. An Investigation into this will show his actions are bias in nature against African American Inmates. Officer S. Russell, is being bias under the color of his authority as a Correctional Officer.

The Disclosure of Evidence, could have been all taken when the ~~Tattered~~ Tumbler, was taken but Officer S. Russell, chose to leave evidence so that each he searched my cell, he could get more evidence. I'd also like to address the issue of the use of the Weusi, as my AKA removed for it is not my AKA. It is total disrespect for that name to be given gang.

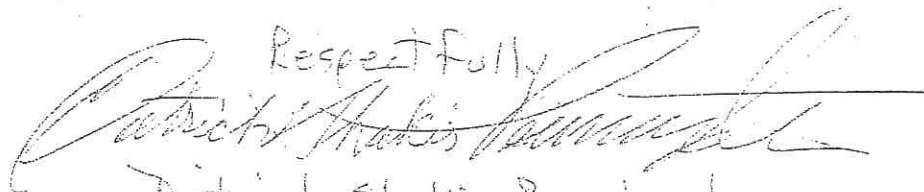
Also upon being questioned <sup>ing</sup> by ISU, I request an Attorney be present at the time of questioning. Also another reason I'm not apart nor do I desire to be apart of a gang, is that I'm a thinking unique individual. No man or other individual tells me how to conduct my life or well being, I answer ~~only~~ to the Creator Allah. Upon a review of my C-File, if they would take the time to review they would find that I don't associate with gang members and never have. When they had A, B, C, cagotray's, for reason of gang affiliation, they'd see I was placed in A cagotray, as a non-affiliate by the Lt. in Building 3.

I've been here at Folsom State Prison, since Dec. 2000 and haven't been involved in any of the incidents here. I came to pris on a me number, not a we number. Officer S. Russell false statement on Gang Information General Chrono, dated March 24, 2000 where he stated "Inmate Pennington possessing multiple copies of the article written by Jordan proves that he is using the article to distribute Jordan's name, CDCR number, and housing number to ensure other B&F associates/members may communicate with Jordan."

Officer S. Russell, is a lie he has never seen or heard of me distributing any said article to anyone. Since when does articles taken out of a Newspaper, which happens to be a African America Newspaper, which again proves the bias nature of officer S. Russell, as well as ISU, continues harass and show biasness. I request that this whole Validation Interview, be discontinued and dropped for I'm not a member nor associate of the B&F or any other prison gang for that matter. Stop trying to pass judgement on me for reading and studying the history of the California Department of Correction and Rehabilitation. For it is history as well as facts. No you validate individuals for reading and studying Nazi books, are being apart of the SKINHEADS, let's see the books, once and for all. I'm a non-affiliate and also a ~~non-affiliate~~ non-affiliate.

Page 1 PENNINGTON H-5072  
It appear that Officer S. Russell, as well as I am to the  
right in as being a gang, better then I would, I'm just trying to  
my time one day at a time. I just want to left alone so  
continue to do this life sentence, the right way so Insha-A'llah  
willing) one day I just might get a date to go home, before I die  
in this God forsaken place.

Respectfully

  
Dietrich Shakir Pennington

E.C. Pennington  
J. Whaley  
ISU  
Captain Cox  
Attorney

# **EXHIBIT 7**

No. H-32632

NAME: PENNINGTON, D

*Comment:* PBSP-SHU endorsed to serve an Indeterminate SHU term. CS = 19.

SHU Indeterminate endorsed per ICC action of 09/25/2008. Inmate has proven to be a threat to the security of the institution by his association with a prison gang engaged in a criminal conspiracy against the safety of others. CDC 128-B-2 of 08/28/2008 is noted. All referenced documents are present in the file, properly annotated and properly disclosed. LIFE Prisoner Status is noted. Next BPT hearing currently scheduled for 09/2009. Madrid chrono of 09/25/08 noted. Inmate is NCF per CDC 128-C2 of 03/25/2003. Violent history noted (VIO). TB Code is 22. CDC 812 is noted. Confidential file is noted.

Retention in ASU is approved pending transfer. This transfer approval expires 2/4/2009 and will require return to CSR for re-authorization.

  
M. Ledesma, CSR

Date: 10/7/2008

Classification - CSR ACTION

FSP

# **EXHIBIT 8**

CDCR#: H32-632 NAME: Pennington Dietrich HOUSING: C1-113  
 Custody: Max S PS: 19 (II) WG/PG: D1/D EFF: 7/31/08 Assignment: SHU INMATE  
 RelDate: MEPD 5/18/01 Reclass: Annual ACTION: Retain SHU INDET status and "S" suffix  
 BPH Hearing: Sub # 6, 9/2010 9/2009 Revoke UCC of 11/13/08 approval of Correspondence  
approval from SAC 9/24/92, CCWF 10/7/92,  
and VSPW 6/1/05 and 10/4/05

Inmate Pennington (S) ~~appeared~~ / refused to appear before PBSP Facility C / D SHU UCC this date for 180-Day Review. S is serving SHU Indeterminate due to his prison gang affiliation as documented on CDCR 128B2 dated 5/28/08. S is an Active/~~Inactive~~ Associate/~~Member~~ of the Black Guerrilla Family prison gang. S's validation was reviewed by Committee and found to meet the criteria required in CCR 3378(c). Committee acts to retain S in SHU per CCR 3341.5(c)(2)(A)2. S participated in Committee's review of his case and ~~agreed~~ / disagreed with Committee action. S ~~was informed~~ / is informed, via this chrono, of the Departmentally recognized avenues for release from SHU are through the debriefing process or through being determined to be an inactive prison gang member or associate as delineated in CCR, Title 15, sections 3378(e) and 3341.5(c)(4) and (5).  
 Comments: \_\_\_\_\_

Committee reviewed S for Inactive Gang Status as outlined in CCR 3341.5(c)(5) and noted the following:

- ☒ The last source document used in the validation process is dated 7/15/08, indicating recent (within 6 years) gang activity.
- ☒ S does not meet criteria for inactive status as outlined in CCR, Title 15, section 3378(e). S will be eligible for another Inactive Review after 3/24/14.

UCC of 11/13/08 approved S's correspondence approvals from SAC dated 9/24/92, CCWF dated 10/7/92, VSPW dated 6/1/05, and 10/4/05; however, the approval was done in error and committee acts to revoke the prior correspondence approvals based on California Code of Regulation Title 15 section 3139 and Department Operations Manual Section 54010.22 and 54010.22.2.

☐ S is double celled with Inmate \_\_\_\_\_, CDCR# \_\_\_\_\_, and states they are compatible.

☒ S has no cellmate and Committee notes the "S" custody suffix has / has not previously been applied.

Committee acts to retain / ~~affix~~ the "S" suffix.

☒ because S has not successfully completed the compatibility review for double celling in PBSP SHU.  
☐ due to \_\_\_\_\_

☒ S is advised, via this chrono of the Committee's decision and his right to appeal.

☐ S was advised of Committee's decision and his right to appeal this Committee action and the appeal must be submitted within 15-working days of this date, whether he has received the CDCR Form 128G Classification chrono or not.

BPH Initial Documentation # \_\_\_\_\_ Subsequent # 6 Hearing scheduled in 9/2010

Next scheduled Committee will be in 9/2009 for an Annual Review.

MEMBERS:

Chairperson

C. Patton, F.C.  
 Print Name/Title

H. Getz, CC II (A)  
 Print Name/Title

Recorder

R. Parker, CCT  
 Print Name/Title

COMMITTEE DATE: 5/5/09 FACILITY: C-1 UCC

180-DAY REVIEW

PBSP-SHU

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **In re Dietrich Pennington**  
No.: **HCPB11-5110**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On September 7, 2011, I served the attached **RETURN TO THE ORDER TO SHOW CAUSE; SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Charles Carbone  
Law Offices of Charles Carbone  
P.O. Box 2809  
San Francisco, CA 94126

Attorney for Petitioner Dietrich Pennington  
CDCR No. H-32632

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 7, 2011, at Sacramento, California.

\_\_\_\_\_  
Lois Buzbee-Osby  
Declarant

\_\_\_\_\_  
*Lois Buzbee-Osby*  
Signature

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **In re Dietrich Pennington**

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On October 18, 2011, I served the attached **RETURN TO THE ORDER TO SHOW CAUSE; SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:


Charles Carbone  
468 Jackson Street  
San Francisco, CA 94111

Law Offices of Charles Carbone  
P.O. Box 2809  
San Francisco, CA 94126

Attorney for Petitioner Dietrich Pennington  
CDCR No. H-32632

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 18, 2011, at Sacramento, California.

Lois Buzbee-Osby  
\_\_\_\_\_  
Declarant

  
\_\_\_\_\_  
Signature